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4 UNITED STATES DISTRICT COURT

5 DISTRICT OF MASSACHUSETTS

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7 MICHELLE C. THOMPSON,

8 Plaintiff,

9 v. DOCKET NO. 04-12301-RGS

10 BLOCKBUSTER, INC., and

11 JAY WELLS, individually,

12 Defendants.

13 - - - - - x

14

15 DEPOSITION OF DIANNE C. SIRARD

16 Thursday, June 1, 2006

17 9:28 a.m.

18 Law Offices of James G. Gilbert

19 15 Front Street

20 Salem, Massachusetts 01970

21

22

23 Reporter: Carol A. Pagliaro, CSR/RPR/RMR

24

1 A P P E A R A N C E S:

2

3 LAW OFFICES OF JAMES G. GILBERT

4 By James G. Gilbert, Esq.

5 15 Front Street

6 Salem, Massachusetts 01970

7 978.744.9800

8 Counsel for the Plaintiff

9

10 BINGHAM McCUTCHEN

11 By Douglas T. Schwarz, Esq.

12 399 Park Avenue

13 New York, NY 10022-4689

14 212.705.7437

15 Counsel for the Defendants

16

17 ALSO PRESENT: Elizabeth B. Neybert

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1 I N D E X

2	EXAMINATION OF:	PAGE
3	Dianne C. Sirard	
4	By Atty. Gilbert	4, 7
5	By Atty. Schwar	11

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11 E X H I B I T S

12	NO.	PAGE
13	1 Document	4
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17 \*Original exhibits retained by Atty. Gilbert

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1 P R O C E E D I N G S

2 Stipulation

3 It is stipulated by and between counsel for the  
4 respective parties that all objections, except as to  
5 form of the question, are reserved until the time of  
6 trial, as are Motions to Strike. It is further  
7 stipulated that signing the deposition before a  
8 Notary Public is waived and that the deposition may  
09:27:33 9 be signed under the pains and penalties of perjury.

09:27:33 10 (Documents marked as Exhibit 1 and 2  
09:27:36 11 for identification.)

12 DIANNE C. SIRARD

13 a witness called for examination by counsel for the  
14 Plaintiff, being first duly sworn, was examined and  
15 testified as follows:

16 DIRECT EXAMINATION

09:27:58 17 BY ATTY. GILBERT:

09:28:00 18 Q. Could you state your full name and address  
09:28:02 19 for the record?

09:28:04 20 A. Dianne Sirard, 82 Wyman Road, Billerica,  
09:28:04 21 Mass. 01821.

09:28:12 22 Q. Good morning, Ms. Sirard.

09:28:12 23 A. Good morning.

09:28:13 24 Q. I'm here to take your deposition. You

09:28:15 1 received a copy of a subpoena. Do you recognize

09:28:20 2 Deposition Exhibit No. 2?

09:28:21 3 A. Yes.

09:28:22 4 Q. Is that an accurate copy of the subpoena you  
09:28:25 5 received?

09:28:26 6 A. Yes.

09:28:58 7 ATTY. GILBERT: Before we begin, the  
09:29:02 8 Plaintiff objects to the presence of Beth Neybert at  
09:29:08 9 this deposition. Ms. Neybert is a fact witness in  
09:29:10 10 this matter. Her testimony, in fact, is a key part  
09:29:15 11 of this litigation. There are a number of witnesses  
09:29:23 12 who will be testifying, some of whom will be  
09:29:28 13 disputing the testimony of Ms. Neybert.

09:29:32 14 The Plaintiff objects to Ms. Neybert's  
09:29:36 15 presence and believes that Ms. Neybert is here for  
09:29:43 16 the purpose of intimidating the witness, and I'd  
09:29:49 17 like to ask the witness a couple of questions for  
09:29:52 18 the record with respect to the presence of Ms.  
09:29:55 19 Neybert.

09:30:01 20 ATTY. SCHWARZ: Let me just respond to  
09:30:03 21 that, because it seems to me, and obviously you will  
09:30:10 22 make whatever record you want to make, it seems to  
09:30:10 23 me you either take the deposition or not.

09:30:17 24 First of all, Ms. Neybert's deposition

09:30:20 1 has been taken over a lengthy 2-day period, so that  
09:30:27 2 is clear. You have had a chance to ask her anything  
09:30:33 3 you want to ask her.

09:30:33 4 Second of all, the company is entitled  
09:30:35 5 to have a representative attend depositions, and Ms.  
09:30:38 6 Neybert is that representative and has attended  
09:30:42 7 other depositions in that capacity, and so there is  
09:30:47 8 no basis for the objection, and if, indeed, we do  
09:30:54 9 have to proceed through motions and so forth, we  
09:30:58 10 will -- I mean, I think it's a completely  
09:31:01 11 inappropriate objection and we will ask for our  
09:31:05 12 costs of resolving it and fees. Go ahead.

09:31:12 13 ATTY. GILBERT: I'd note under the Rules  
09:31:12 14 of Civil Procedure seeking a Protective Order for  
09:31:18 15 the exclusion of someone from a deposition is an  
09:31:18 16 entirely appropriate and recognized motion to make.

09:31:20 17 ATTY. SCHWARZ: But not after you have  
09:31:21 18 gotten everybody to come to the deposition site and  
09:31:26 19 spend money and time to do that when certainly this  
09:31:32 20 issue could have been anticipated.

09:31:35 21 ATTY. GILBERT: I think the defendants  
09:31:38 22 are well aware of the situation here, and I don't  
09:31:42 23 think it requires any further exposition from me.

09:31:48 24 ATTY. SCHWARZ: Let me say one other

09:31:48 1 thing. I'm not putting my substantive -- I'm  
09:31:54 2 reserving my substantive arguments why it is  
09:31:58 3 completely appropriate to have Ms. Neybert here. I  
09:32:03 4 don't see any value, and, in fact, I don't want to  
09:32:06 5 put them on the record at this point with the  
09:32:10 6 witness present, but go ahead.

09:32:10 7 EXAMINATION, cont'd

09:32:12 8 BY ATTY. GILBERT (CORRECTION BY JGG 06-02-2006):

09:32:17 9 Q. Do you know Ms. Neybert?

09:32:17 10 A. Yes.

09:32:17 11 Q. Do you have any concerns regarding her  
09:32:20 12 presence here today at this deposition?

09:32:21 13 A. Yes. I'm uncomfortable. I think it is next  
09:32:25 14 to harassment. I have a past with her that wasn't  
09:32:30 15 very enjoyable at an unemployment hearing I went  
09:32:31 16 through, that I don't need to have somebody sitting  
09:32:34 17 here -- a representative of the company would be  
09:32:36 18 fine, but it should be somebody else.

09:32:40 19 If we maybe didn't have a past, it might  
09:32:43 20 be different, but it makes me extremely  
09:32:46 21 uncomfortable, and I believe it's done to intimidate  
09:32:49 22 me.

09:32:50 23 Q. Do you think Ms. Neybert's presence would  
09:32:51 24 have an impact on your ability to give testimony?

09:32:59 1 A. Yes.

09:32:59 2 Q. How do you think it would impact your  
09:32:59 3 ability to give testimony?

09:32:59 4 A. I think it's an intimidation move. I think  
09:33:04 5 it's here to say we are going to try to make you  
09:33:05 6 uncomfortable so you can't think straight, so we can  
09:33:08 7 intimidate you, and I have every right to feel how I  
09:33:11 8 feel, and that is how I feel about it.

09:33:15 9 ATTY. GILBERT: Based on the witness's  
09:33:16 10 representations and the concerns of the Plaintiff  
09:33:20 11 regarding the presence of Ms. Neybert, I will  
09:33:21 12 suspend the deposition at this point, and the  
09:33:24 13 Plaintiff will move for a Protective Order to  
09:33:29 14 exclude Ms. Neybert from this and future fact  
09:33:32 15 witness depositions.

09:33:40 16 ATTY. SCHWARZ: All right. I will  
09:33:42 17 reserve -- well, you know, I guess, do you mind if I  
09:33:54 18 ask a couple of questions?

09:33:55 19 ATTY. GILBERT: I don't really think  
09:33:57 20 it's appropriate.

09:33:58 21 ATTY. SCHWARZ: You object to me asking  
09:33:59 22 questions?

09:34:00 23 ATTY. GILBERT: I do.

09:34:01 24 ATTY. SCHWARZ: Then I won't ask any

09:34:02 1 questions. I want it on the record, though, that I  
09:34:06 2 would like to ask questions. I'm here ready,  
09:34:09 3 willing, and able to ask questions.

09:34:11 4 ATTY. GILBERT: Well, the witness has  
09:34:12 5 already indicated that she doesn't want to proceed  
09:34:14 6 with the deposition. What is the nature of the  
09:34:16 7 questions you are seeking to ask?

09:34:18 8 ATTY. SCHWARZ: I'm seeking to ask  
09:34:20 9 questions about the witness's basis for not wanting  
09:34:24 10 to proceed.

09:34:42 11 ATTY. GILBERT: Well, we already  
09:34:44 12 explored that issue. The witness indicates she is  
09:34:47 13 intimidated. I'm unclear as to what further  
09:34:51 14 information you need from the witness that she has  
09:34:54 15 not already presented.

09:35:02 16 ATTY. SCHWARZ: If you say that you are  
09:35:05 17 going to ask the Court to make a ruling on this, I'd  
09:35:06 18 like to ask the witness about the basis on which she  
09:35:12 19 claims to be intimidated.

09:35:25 20 ATTY. GILBERT: The witness has  
09:35:25 21 indicated that -- she indicated a past history with  
09:35:30 22 Ms. Neybert and specifically cited an issue with  
09:35:33 23 respect to the unemployment hearing that she  
09:35:37 24 attended at which Ms. Neybert represented the

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09:35:42 1 company and opposed her unemployment. Are you  
09:35:46 2 asking whether or not there is anything in addition  
09:36:00 3 to that?

09:36:00 4 ATTY. SCHWARZ: I'm not going to allow  
09:36:00 5 you to filter my questioning. If you want to  
09:36:00 6 essentially stop the deposition and instruct the  
09:36:01 7 witness not to answer my questions, then go ahead  
09:36:05 8 and do that. This is a civil, and I say with a  
09:36:08 9 small c, proceeding. You know, I'm not going to do  
09:36:17 10 any more than state my request and my objection, and  
09:36:21 11 if you are saying don't go any further, if you are  
09:36:24 12 saying to the witness, Don't say anything, then we  
09:36:28 13 are done, and we will go to court.

09:36:31 14 ATTY. GILBERT: I'm not in a position to  
09:36:34 15 instruct the witness not to answer. She is not my  
09:36:34 16 client, she is a fact witness, so I can't, in my  
09:36:39 17 mind, instruct the witness whether or not to answer  
09:36:42 18 a question, and I'm not, in fact, instructing the  
09:36:44 19 witness.

09:36:47 20 I think you put the request to me. If  
09:36:47 21 you are requesting from me, I don't see any need to  
09:36:49 22 it.

09:36:50 23 You are here, if you want to ask some  
09:36:52 24 questions and you insist on doing so, I don't see

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09:36:55 1 any basis by which I can prevent you from doing so.

09:36:55 2 EXAMINATION

09:37:04 3 BY ATTY. SCHWARZ:

09:37:04 4 Q. Good morning, Ms. Sirard?

09:37:06 5 A. (Nod.)

09:37:06 6 Q. My name is Doug Schwarz, and I represent the

09:37:11 7 Defendants in this case, Blockbuster is one of them

09:37:16 8 and Jay Wells is the other, and I understand that

09:37:23 9 you have said that you don't want to go forward and

09:37:27 10 testify today.

09:37:37 11 Other than generally speaking, something

09:37:39 12 about an unemployment hearing, what is the specific

09:37:42 13 reason that you are not going to agree to provide

09:37:47 14 testimony today?

09:37:47 15 ATTY. GILBERT: Objection.

09:37:48 16 A. I think I already stated that, and I'm not

09:37:50 17 going to repeat myself. I am uncomfortable, and

09:37:58 18 that is exactly why. I went through an unemployment

09:37:58 19 hearing. Beth can fill you in on the whole hearing,

09:37:59 20 because she was involved with it, and any

09:38:02 21 information about the details of the hearing, you

09:38:05 22 can talk to Beth.

09:38:06 23 Q. What I'd like to ask you, though, is, other

09:38:11 24 than attending the hearing and speaking at the

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09:38:15 1 hearing on behalf of Blockbuster, was there anything  
09:38:20 2 else that Ms. Neybert did that causes you to feel  
09:38:20 3 uncomfortable?

09:38:27 4 A. No, what happened at the hearing, that is  
09:38:29 5 involved with the hearing, is what I'm saying.

09:38:35 6 Q. You are talking about testimony that Ms.  
09:38:39 7 Neybert gave at the hearing?

09:38:40 8 A. Correct.

09:38:41 9 Q. Anything else?

09:38:42 10 A. No.

09:38:43 11 Q. Did she say anything to you walking out of  
09:38:45 12 the hearing?

09:38:46 13 A. No.

09:38:47 14 Q. Going into the hearing?

09:38:48 15 A. No.

09:38:49 16 Q. Other than the hearing itself, did she say  
09:38:55 17 anything to you that is causing you concern?

09:38:58 18 A. We worked together for a while; issues that  
09:38:59 19 came up at work that involved -- that were brought  
09:39:02 20 up in the hearing were also part of it, and I'm very  
09:39:05 21 uncomfortable having this conversation with you.

09:39:10 22 Q. As you can imagine, I have a number of  
09:39:12 23 questions I want to ask you this morning, and I'd  
09:39:17 24 like to continue asking them, and are you saying

09:39:21 1 that you will not answer them?

09:39:25 2 A. I'm saying I'm uncomfortable speaking with  
09:39:26 3 her in the room. If you have another  
09:39:27 4 representative, that is fine, but other than that,  
09:39:29 5 I'm very uncomfortable. I think it's harassment.  
09:39:33 6 If you want to me to keep repeating myself, I will.

09:39:34 7 Q. No, I don't want you to keep repeating  
09:39:37 8 yourself, I just want to be clear, because  
09:39:39 9 eventually, apparently, a judge is going to have to  
09:39:42 10 make a decision about this, and I just want the  
09:39:44 11 judge to be able to understand what the basis is on  
09:39:48 12 which you are objecting to having the company  
09:39:51 13 representative here.

09:39:52 14 A. I'm sure Jim will explain it to them.

09:39:56 15 Q. But it's really your issue, because you are  
09:39:58 16 here -- you understand that you are here under a  
09:40:02 17 subpoena which is issued by Mr. Gilbert, but it's  
09:40:08 18 issued in the name of the Court; you understand  
09:40:10 19 that?

09:40:10 20 A. Correct.

09:40:11 21 ATTY. GILBERT: Objection.

09:40:13 22 Q. And the fact that you are uncomfortable  
09:40:22 23 usually isn't enough of a reason not to testify in  
09:40:24 24 response to a subpoena?

09:40:26 1 ATTY. GILBERT: Objection.

09:40:28 2 A. I feel it is a form of harassment.

09:40:38 3 Q. What I'd like to do is, I'd like to ask you  
09:40:43 4 some questions about the time period when you were  
09:40:45 5 working at Blockbuster.

09:40:47 6 A. I'm not going to answer any more of your  
09:40:50 7 questions. I have already stated that I'm  
09:40:53 8 uncomfortable, and I feel like you are just trying  
09:40:53 9 to continue to ask me questions, and if you want to  
09:40:56 10 continue it, I'm telling you I feel like you are  
09:40:58 11 harassing me.

09:41:00 12 Q. At this point then, and on that basis, I  
09:41:04 13 will not ask you any further questions, and we will  
09:41:10 14 -- and I want to assure you that I respect the  
09:41:14 15 position that you are taking, and this will just  
09:41:20 16 have to get worked out through the legal system .

09:41:25 17 ATTY. SCHWARZ: So at this point I don't  
09:41:27 18 see any reason to go further, Jim, and I think we  
09:41:40 19 are going to have to suspend.

09:41:40 20 ATTY. GILBERT: On that basis we will  
09:41:41 21 suspend pending Plaintiff's filing of the Motion for  
09:41:44 22 Protective Order relative to the attendance of Ms.  
09:41:50 23 Neybert at this particular deposition and perhaps  
09:41:52 24 future fact depositions.

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09:41:56 1 That being said, we are going to suspend  
09:41:59 2 the deposition at this point. Ms. Sirard, thank you  
09:42:02 3 for coming. We will be in contact with you about  
09:42:06 4 the rescheduling of this deposition.

09:42:07 5 I don't have anything further. Doug, do  
09:42:09 6 you have anything?

09:42:10 7 ATTY. SCHWARZ: No.

8 (Whereupon, the record was closed at  
9 9:42 a.m.)

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## 1 C E R T I F I C A T E

2 I, DIANNE C. SIRARD, do hereby certify that I have  
 3 read the foregoing transcript of my testimony, and  
 4 further certify that said transcript is a true and  
 5 accurate record of said testimony (with the  
 6 exception of the following corrections listed  
 7 below):

8	Page	Line	Correction/Reason
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____

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19 Signed under the pains and penalties of perjury  
 20 this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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DIANNE C. SIRARD

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1 Commonwealth of Massachusetts

2 Suffolk, ss.

3 I, Carol A. Pagliaro, Registered Professional  
4 Reporter and Notary Public in and for the  
5 Commonwealth of Massachusetts, do hereby certify  
6 that DIANNE C. SIRARD, the witness whose deposition  
7 is hereinbefore set forth, was duly sworn by me and  
8 that such deposition is a true record of the  
9 testimony given by the witness to the best of my  
10 skill and ability.

11 I further certify that I am neither related to,  
12 nor employed by, any of the parties in or counsel to  
13 this action, nor am I financially interested in the  
14 outcome of this action.

15 In witness whereof, I have hereunto set my hand  
16 and seal this 1st day of June, 2006.

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20 \_\_\_\_\_  
Carol A. Pagliaro, RMR

21 Notary Public

22 CSR No. 123293

23 My commission expires

24 April 28, 2011